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EXAMINER

SZMAL, BRIAN SCOTT

ART UNIT

PAPER NUMBER

3736

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/519,299	Applicant(s) AMIDZIC, OGNJEN	
	Examiner Brian Szmaj	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Information Disclosure Statement

1. The information disclosure statement filed December 22, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

2. Claims 38-47 are objected to because of the following informalities: The claims refer to cancelled claim 19. Appropriate correction is required.

3. Claim 48 is objected to because of the following informalities: The claim refers to cancelled claim 29. Appropriate correction is required.

4. Claims 50 and 51 are objected to because of the following informalities: the claims refer to cancelled claim 31. Appropriate correction is required.

5. Claim 37 is objected to because of the following informalities: In line 6, "the respective situation" lacks antecedent basis. In line 8, "frames" should read as "frame". In line 9, "the succeeding situations" lacks antecedent basis. In lines 10-11, "the respective measurement value" lacks antecedent basis. In line 12, "the succeeding measurement samples" lack antecedent basis. In line 13, "the respective change" lacks antecedent basis. In line 19, "the data" lacks antecedent basis, and "relationships"

should read as "relationship". In lines 10 and 15, "whereby" should read as "wherein".
Appropriate correction is required.

6. Claim 39 is objected to because of the following informalities: In lines 3-4, "the respective test situation of the sequence of said situations" lacks antecedent basis.
Appropriate correction is required.

7. Claim 41 is objected to because of the following informalities: In line 1, "the test situations" lack antecedent basis. Appropriate correction is required.

8. Claim 42 is objected to because of the following informalities: In line 1, "the test situations" lack antecedent basis. Appropriate correction is required.

9. Claim 43 is objected to because of the following informalities: In line 1, "the relevant activity changes" lacks antecedent basis. Appropriate correction is required.

10. Claim 45 is objected to because of the following informalities: In line 1, "the relative number" lacks antecedent basis. Appropriate correction is required.

11. Claim 46 is objected to because of the following informalities: In lines 1-2, "the comparison data and/or threshold" lacks antecedent basis. In line 3, "the experimentally drawn up areas" lack antecedent basis. Appropriate correction is required.

12. Claim 48 is objected to because of the following informalities: In line 1, "the measuring samples" lack antecedent basis. Appropriate correction is required.

13. Claim 49 is objected to because of the following informalities: In line 1, "Arrangement" should read as "Apparatus". In line 4, "whereby" should read as "wherein". In lines 7, 9 and 10, "means to" should read as "means for" in order to properly invoke 112 6th Paragraph claim language. Appropriate correction is required.

14. Claim 50 is objected to because of the following informalities: In lines 1-2, "the means for tracing and localizing relevant activity changes" lacks antecedent basis. In line 1, "The data processing system" should read as "The apparatus". Appropriate correction is required.

15. Claim 51 is objected to because of the following informalities: In lines 2-3, "the visual or acoustic presentation of the succession of test situations and/or for the preparation of the data reflecting the group relationships" lack antecedent basis. In line 1, "The data processing system" should read as "The apparatus". Appropriate correction is required.

Claim Rejections - 35 USC § 112 & 35 USC § 101

16. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

17. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

18. Claims 37-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 37 and 38, the use of "won" renders the claims indefinite, since it is unclear to the Examiner how exactly measurement samples are won, when measurements are taken.

Regarding Claim 39, it is unclear if "a time frame" in line 3, discloses a new time frame or if it is the same time frame that was previously disclosed.

Regarding Claim 41, it is unclear to the Examiner how problems would be "solvable using specific experiences".

Regarding Claim 44, it is unclear what "foreseen for the forming" exactly means in the claim.

Regarding Claim 53, it is unclear what exactly is being claimed.

19. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

20. Claims 37-48 provide for the use of a means for generating data to assess the cognitive capacity of a test person, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 37-48 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

21. Claims 53 and 54 provide for the use of the method of Claim 19 (a cancelled claim), but, since the claim does not set forth any steps involved in the method/process,

it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 53 and 54 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

22. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

23. Claims 37-48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 37 and 38 disclose the measurement samples are "won". The current specification lacks support for a the measurement samples being "won".

Claim Rejections - 35 USC § 102

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24. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

25. Claims 37-46 and 48-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenfeld (5,957,859).

Based upon the current deficient claim language, the Examiner has attempted to interpret the claims as being readable upon Rosenfeld, as seen below.

Rosenfeld discloses a means for detecting lies through the measurement of EEG signals through the scalp and further disclose the test person is exposed to different situations; the situation occurs within a time frame; measurement samples which reflect activities in the brain of the test person are registered within the time frame; a measurement sample consists of measurement values, whereby the measurement value is delivered by the respective probe in one time frame; changes in the brain activity is derived from measurement samples; the change in the brain activity is localized; groups are created from the changes of the activities, whereby each group is assigned to another brain region; a relationship is determined among different brain regions; data is made ready for the assessment; relevant activity changes are traced and localized, wherein groups are formed and wherein relationship data are made available which relate to the measurement samples within all time frames or within one time frame or within a group of time frames; the time frames for registering the measurement samples are synchronized with the succession of test situations in such a

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manner that the time frame begins with the beginning of the test situation; each time frame has a length of between 0.1 and 3000 seconds; the tests are displayed visually or acoustically; the test situations are images or other situations directed at a possible experience of the person; the relevant activity changes are traced by filtering; the parts of the brain that are monitored are the frontal, occipital, parietal, temporal, the hippocampus and the limbic system; a relative number of relevant activity changes in the groups are determined in order to draw up relationship data; comparison data is displayed; the samples are recorded at a frequency of 10-5000 Hz; and the assessment means is used as a lie detector. See Column 3, lines 50-52; Column 4, lines 1-13; Column 8, lines 55-59; Column 9, lines 22-24; and Column 16, lines 6-8, 14-17 and 54-59.

Claim Rejections - 35 USC § 103

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenfeld (5,957,859) as applied to claim 19 above, and further in view of Gevins et al (5,331,970).

Rosenfeld, as discussed above, disclose a lie detector means using EEG and ANOVA analysis of the EEG signals, but fail to disclose utilizing a goodness of fit of more than 90%.

Gevins et al disclose an EEG spatial enhancement means and further disclose the use of a goodness of fit to analyze the EEG signals. See Column 10, lines 52-53.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the means of Rosenfeld to include the use of a goodness of fit instead of ANOVA, as per the teachings of Gevins et al, since a goodness of fit is another means of statistical analysis to obtain a result from multiple input variables with relative accuracy.

Response to Arguments

28. Applicant's arguments filed March 12, 2008 have been fully considered but they are not persuasive.

29. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

30. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

31. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmaj whose telephone number is (571)272-4733. The examiner can normally be reached on Monday-Friday, with second Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian Szmal/
Primary Examiner, Art Unit 3736